



October 5, 2016

Via Email and U.S. Mail

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Re: ACLU of Ohio Comments on Use of Force Policies

Dear Matthew,

Thank you for your time yesterday. I'm writing to follow up on our discussion. I want to summarize the concepts we discussed relating to the current draft policies, and also I'm providing the more detailed suggestions that I promised to send.

I. The "Use of Force General" Policy
a. General Comments

The ACLU of Ohio views the current draft policy circulated by your team as a marked improvement over the Cleveland Department of Police (CDP)'s previous policy. We drew attention to the following provisions in particular because we regard them as critically necessary inclusions:

- The "necessary and proportional" requirements;
- The prohibitions on use of force, using specific examples (for instance the use of chokeholds; using force against a person who is handcuffed; and using force against a person whose perceived offense is merely verbal, who is engaging in passive resistance, or who is exercising their First Amendment rights);
- The prohibition on brandishing weapons (III A 5);
- The new prohibitions on deadly force, especially those relating to vehicles; and
- A police officer's duty to intervene to stop the use of excessive force (IV).

As the policy progresses from draft to final form, care must be taken not to weaken any of these important features.

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We were pleased to learn during the course of our meeting that the next draft of the policy will include a prefatory statement clearly articulating the policy's core principle: the sanctity of human life. This will help ensure that the rest of the policy is construed in furtherance of that principle.

We reiterate what we said in our meeting, however, that it is not enough for the CDP to have strong policies on the books. We are glad you agree that the proposed cluster of Use of Force Policies is not self-actualizing, and that you are already moving to develop mechanisms that will animate these policies (including rules on reporting, data collection, training, and discipline). We discuss these concepts further in Section IV below.

b. Specific Suggestions on "Use of Force General" Policy

1. The duty to intervene, Section IV, should be strengthened to impose a duty not just to take action to stop – but also to *prevent* – any imminent unauthorized use of force.
2. A provision should be added to the Proportionality rules, requiring officers to reduce the level of force applied as the threat diminishes. The goal of de-escalation shouldn't be abandoned just because force has been initiated. When it is safe to do so, force should be reduced. Logically, this provision could be inserted as subtopic C under III, Proportionality.
3. The duty to issue a warning before inflicting deadly force must be articulated more powerfully. As the policy is currently written, this critical duty appears only as an afterthought, on page 4, under Procedures II C 2, under the heading, "Deadly Force: When Authorized."

The words, "and, where feasible, some warning has been given," aren't even dignified with their own numbering, are expressed only in passive voice, and are further diminished by the insertion of the word "some."

Instead, this rule should be expressed as a standalone provision (marked as II D), stating that: "Where feasible, an officer must give clear warning and an opportunity for the subject to comply."

II. The "De-escalation" Policy

The introductory policy statement, as written, focuses more on the exceptions to de-escalation than on the general rule requiring it. The statement, rather than starting from the premise that de-escalation strategies are to be used "when safe under the totality of the circumstances and time and circumstances permit" should instead begin by expressing broad encouragement for de-escalation. Exceptions to the general rule do have a place within the policy, but not in what *should be* a strong opening statement of commitment to the policy. We recommend that the policy begin with a clear statement providing that officers will use de-escalation techniques whenever possible and appropriate.

III. The "Use of Force: Intermediate Weapons" Policy

As we discussed, the Intermediate Weapons Policy is limited to detailed rules regarding the use of only four specific types of weapons: baton/impact, OC spray, CEWs, and beanbag shotguns. It fails to provide for the certainty that new weapons will be developed and acquired. We were gratified during our discussion to learn that guidelines for the acquisition of new categories of intermediate weapons, and the development of rules governing their use, will appear in forthcoming policies. We will look at these with interest.

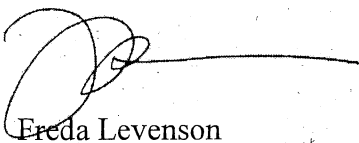
IV. Other Necessary Implementing Policies

Of course we all agree that, as good as the new Use of Force policies may be, they will be meaningless if they are not strictly and consistently enforced. We are looking forward to the development of policies establishing the following elements:

- Reporting and Data Collection - Policies must be established requiring that, as soon as practical following a use of force, the CDP will ensure that the incident is accurately and thoroughly reported and documented.
- Transparency - To build understanding and trust, the CDP must issue regular reports to the public on use of force.
- Investigations and Discipline - Following every use of force, the CDP must ensure that the incident is fully investigated. The investigating body must be fully funded and staffed. A scheme of appropriate disciplinary measures for non-adherence to the policies must be established, understood, and consistently and fairly imposed.
- Training - Officers must receive initial training in the use of force as well as periodic updates and refresher courses.

The ACLU of Ohio will be reviewing these implementing policies as they are developed, and will offer more specific comments as warranted. Meanwhile, please do not hesitate to contact us if you have any questions about the foregoing or wish to discuss these comments further.

Sincerely,



Freda Levenson
Legal Director
ACLU of Ohio

cc: Mr. Mario Clopton; Dr. Rhonda Williams; Mr. Charles See